



Focus: Liability of Legal Persons

Dossier particulier: La responsabilité des personnes morales

Schwerpunktthema: Verantwortlichkeit juristischer Personen

Unternehmensstrafbarkeit im europäischen und internationalen Recht

Dr. Marc Engelhart

Cosmetic Use and Lack of Precision in Compliance Programmes: Any Solution?

Prof. Dr. Adán Nieto Martín

Compliance Programmes and “Organisational Faults” in Italian Legislation

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Liability of Legal Persons and Collective Entities for Environmental Crimes
in Italian Law

Grazia Maria Vagliasindi

Investigations on Social Networks

Klaus Hoffmann

Contents

News*

European Union

Foundations

- 89 Guest Editorial
- 90 News
- 90 Reform of the European Union
- 90 Enlargement of the EU

Institutions

- 91 Council of the EU
- 91 Commission
- 91 European Parliament
- 91 Court of Justice (CJEU)
- 92 Europol
- 95 Eurojust
- 97 European Judicial Network (EJN)
- 97 Frontex

Specific Areas of Crime / Substantive Criminal Law

- 98 Protection of Financial Interests
- 99 Market Abuse
- 99 Fraud
- 100 Money Laundering
- 100 Organised Crime
- 102 Cybercrime
- 102 Counterfeiting & Piracy
- 102 Sexual Violence

Procedural Criminal Law

- 103 Procedural Safeguards
- 103 Data Protection
- 104 Victim Protection

Cooperation

- 104 Police Cooperation

Council of Europe

Foundations

- 105 Reform of the European
Court of Human Rights
- 106 Other Human Rights Issues

Specific Areas of Crime

- 107 Corruption
- 108 Money Laundering

Procedural Criminal Law

Legislation

Articles

Liability of Legal Persons

- 110 Unternehmensstrafbarkeit im europäischen
und internationalen Recht
Dr. Marc Engelhart
- 124 Cosmetic Use and Lack of Precision in
Compliance Programs: Any Solution?
Prof. Dr. Adán Nieto Martín
- 127 Compliance Programs and “Organisational
Faults” in Italian Legislation.
An Overview of Ten Years of Experience
with Legislative Decree 231/2001
Nicola Selvaggi
- 131 Liability of Legal Persons and Collective
Entities for Environmental Crimes
in Italian Law
Grazia Maria Vagliasindi
- 137 Investigations on Social Networks.
A German Perspective
Klaus Hoffmann

Imprint

* News contain internet links referring to more detailed information. These links can be easily accessed either by clicking on the respective ID-number of the desired link in the online-journal or – for print version readers – by accessing our webpage www.mpicc.de/eucrim/search.php and then entering the ID-number of the link in the search form.

Guest Editorial

Dear Readers,

Legal entities may now be held criminally liable in many European countries. The days are long gone when this was a typically Anglo-American phenomenon and the advantages of introducing such a form of ascribing responsibility were subject for debate in civil law systems.

In fact, for many years awareness had been growing among criminologists – to paraphrase the fitting expression used by one of the masters of Italian criminal law, Franco Bricola, in the title of one of his celebrated papers – of the significant cost of the principle *societas delinquere non potest* with a view to modernising the regulation of company law. In this context, the idea gradually gained ground that, under certain conditions, legal persons could and indeed should be held liable for offences committed by persons working for them. This legal notion arose from the approach adopted in common law systems and the suggestions contained in the renowned US Supreme Court ruling of 23 February 1909 with regard to the New York Central & Hudson River Railroad Co., which signalled the birth of the “*societas delinquere potest*” notion in the US system.

The die had been cast but, at least in Italy, it was not until 2001 that Legislative Decree No. 231 was adopted to create a preventive/enforcement mechanism targeting legal entities directly as leading players in the penal system rather than simply as possible supporting actors.

Within the limited framework of this editorial, I would like to draw attention to two aspects of Italy’s experience that I feel indicate equally significant trends in the development of the liability of legal entities. The provision made for the administrative responsibility of legal entities, which clearly contains retributive elements, for certain types of crime was introduced in Italy in order to comply with the mandate contained in Section 11 of Law No. 300/2000 to ratify and implement the OECD Convention on combating bribery of foreign public officials in international business transactions as well as the European Union Conventions against corruption and on the protection of the European Communities’ financial interests, with its respective Protocols. The key challenge was to develop an autonomous system based on objective and subjective criteria for attributing responsibility to legal entities. The final

result of this process can be found in the organisational, managerial, and supervisory models set out in Sections 6 and 7 of Decree No. 231, the true keystone of the system of making legal entities liable. These instruments have clearly been developed with an eye toward the North American experience with compliance programs, although they have obviously been adapted to take account of the particular nature of the Italian legal system.

The models in question give expression to the preventive approach behind Decree No. 231, calling on entities to collaborate in the creation of preventive rules and, at the same time, defining the criteria for the responsibility of the entity itself when guilt is being established.

The Italian experience shows that this is a system of responsibility based heavily on what has gone before in other parts of the world and characterised by openness to models already tried out elsewhere. It is a system that, again in the light of Italy’s experience, has distinguished itself by dint of its capacity to develop and, over time, has enjoyed increasingly widespread application. It is also a system which, as far as I can gauge from the recent reforms in Spain and the United Kingdom, is helping to fuel the debate on possible punitive models for entities.

It seems to me that the challenge now is to develop an approach that actually takes account of the way models “circulate” in order to draw on common features. By analysing best practices and the experience gained in applying the various systems, it will be possible to prepare the ground for setting out “model” guidelines.

Prof. Paola Severino
Italian Minister of Justice



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